

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BARBARA ANDERSON,)	CASE NO. 1:22-CV-00627
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
GREGORY A. THOMPSON, et al.,)	ORDER ADOPTING MAGISTRATE
)	JUDGE'S REPORT AND
Defendants.)	RECOMMENDATION

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Thomas M. Parker. The Report and Recommendation (ECF # 91), issued on November 23, 2022, is hereby ADOPTED by this Court. Plaintiff Barbara Anderson filed a first amended complaint in this Court on June 16, 2022, alleging claims of federal copyright violations and state-based torts. (ECF #69).¹ On November 9, 2022, Defendant Gregory A. Thompson filed a motion to dismiss the first amended complaint pursuant to FED. R. CIV. P. 12(b)(4), asserting insufficient process, and FED. R. CIV. P 12(b)(5), asserting insufficient service of process. (ECF #89).

The Magistrate Judge recommends that Defendants motion be denied because it is

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This case was initially filed in the U.S. District Court for the Northern District of California, on October 22, 2021. (ECF #1). It was later transferred to this Court on April 18, 2002. (ECF #55).

procedurally improper. As noted in the Magistrate Judge's Report and Recommendation:

On October 22, 2021, Anderson filed a complaint against Thompson and others. ECF Doc. 1. On March 6, 2022, Thompson moved to dismiss the complaint but did not assert the defense of insufficiency of process or insufficient service of process. *See* ECF Doc. 35. Then, on March 22, 2022, Thompson filed an answer that also failed to assert the defense of insufficiency of process or insufficient service of process. ECF Doc. 41. Moreover, even as to the amended complaint, Thompson answered the amended complaint prior to filing his motion to dismiss and again failed to raise the defenses. *See* ECF Doc. 86. Because Thompson has not previously asserted the defenses under Fed. R. Civ. P. 12(b)(4) and (5), he has waived any challenge to the complaint and the amended complaint on these grounds. *See* Fed. R. Civ. P. 12(h)(1). Accordingly, I recommend that Thompson's motion to dismiss (ECF Doc. 89) be DENIED.

Report and Recommendation, at 1-2. (ECF #91).

Mr. Thompson has not filed any objections to the Magistrate Judge's Report and Recommendation; nonetheless, the Court has reviewed *de novo* the Report and Recommendation, *see Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999), and ADOPTS the Report and Recommendation in its entirety. (ECF # 91). Accordingly, Defendant's motion to dismiss is, therefore, DENIED. (ECF #89).

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: January 11, 2023